

# United States District Court Southern District of Texas

Case Number: 03mc386

## ATTACHMENT

Description:

☐ State Court Record ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 112 of \_\_\_\_\_

☐ Exhibit to: \_\_\_\_\_  
number(s) / letter(s) \_\_\_\_\_

Other: \_\_\_\_\_

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Vol. 7 of 7

No. \_\_\_\_\_

CCRA No. \_\_\_\_\_

**72810**

**Duane Edwards Buck**

*Appellant*

*Offense*

*Punishment*

*County*

MOTION FOR

REHEARING IS

19

JUSTICE

Trial Court \_\_\_\_\_

Trial Court No. \_\_\_\_\_

Trial Judge \_\_\_\_\_

Disposition \_\_\_\_\_

Date \_\_\_\_\_

Justice \_\_\_\_\_ P.C. \_\_\_\_\_ S \_\_\_\_\_

Panel \_\_\_\_\_ Quarter \_\_\_\_\_ En Banc \_\_\_\_\_

S/F **lbs. 26-30**

St. B \_\_\_\_\_

Ap. B \_\_\_\_\_

Supp. Tr. \_\_\_\_\_

Supp. B \_\_\_\_\_

Pro Se \_\_\_\_\_

On Pdr \_\_\_\_\_

Pdr. Filed \_\_\_\_\_

Response \_\_\_\_\_

Brief \_\_\_\_\_

S. Brief \_\_\_\_\_



CAUSE NO. **72810**  
IN THE COURT OF CRIMINAL APPEALS  
AT AUSTIN, TEXAS

---

DUANE EDWARD BUCK

Appellant

VS.

THE STATE OF TEXAS,

Appellee

---

TRIAL CAUSE NO. 699684  
APPEAL FROM THE 208TH DISTRICT COURT  
OF HARRIS COUNTY, TEXAS  
JUDGE DENISE COLLINS, PRESIDING

---

REPORTER'S RECORD

PUNISHMENT

May 6, 1997

**FILED IN**  
COURT OF CRIMINAL APPEALS

JAN 5 - 1998

Troy C. Bennett, Jr., Clerk

VOLUME 28 OF 30 VOLUMES

MARILYN SKINNER  
Certified Official Court Reporter  
208th District Court  
Harris County, Texas

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S-59	Jail Booking Records	10	9/11	21/26	30
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S-60	Jail Booking Records	10	9/11	--	
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S-61	Jail Booking Records	10	9/11	21/ 26	30
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S-62	Jail Booking Records	10	9/11	23/ 26	30
S-62A	Jail Booking Records	8	--	--	--
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\*DEMONSTRATIVE PURPOSES ONLY

\*\*APPELLATE PURPOSES ONLY

CAUSE NO. 699684

THE STATE OF TEXAS	)	IN THE DISTRICT COURT OF
	)	
VS.	)	HARRIS COUNTY, T E X A S
	)	
DUANE EDWARD BUCK	)	208TH JUDICIAL DISTRICT

---

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BE IT REMEMBERED that upon the 6th day of May, 1997, the above entitled and numbered cause came on for punishment hearing before the Honorable Denise Collins, Judge presiding, and a jury; in the 208th District Court of Harris County, Texas; and both the State and the Defendant, appearing in person and/or by counsel, the following proceedings were had, viz.:

1 THE COURT: This is Cause  
2 No. 699684, the State of Texas  
3 vs. Duane Edward Buck.

4 Are both sides ready to  
5 proceed?

6 MS. HUFFMAN: The State's  
7 ready.

8 MR. EASTERLING: The  
9 Defense is ready.

10 THE COURT: Call your  
11 first witness.



1 R. L. SCHIELD

2 was called as a witness by the State and,  
3 having been duly sworn, testified as follows:

4  
5 DIRECT EXAMINATION

6 BY MS. HOOD:

7 Q Please state your name.

8 A R. L. Schield.

9 Q How are you employed, sir?

10 A The Harris County Sheriff's Department.

11 Q What is your assignment?

12 A I'm assigned to the Identification  
13 Division.

14 Q What are your duties with the I.D.  
15 Division?

16 A We maintain print records of prisoners  
17 and we also do crime scene  
18 investigations.

19 Q Do you have any experience and training  
20 and that enables you to carry out your  
21 duties?

22 A Yes, ma'am.

23 Q What would that consist of?

24 A In regard to fingerprints, I've  
25 completed basic and advanced fingerprint

1 courses with the FBI, and I've also had  
2 sixteen years of day-to-day experience  
3 in advanced latent fingerprint  
4 comparison.

5 Q What is a latent print?

6 A A latent print is a print that's left  
7 behind by a person and developed by  
8 powder or chemicals.

9 Q What's an ink print?

10 A An ink print is when you take a person  
11 and place their finger or thumb on an  
12 ink pad and then roll their print out on  
13 paper.

14 Q Let me ask you this. Do you ever have  
15 two people who have the same prints?

16 A No, ma'am.

17 Q Is it possible to take a known print and  
18 compare it to an unknown print to  
19 determine if there are a match?

20 A Yes, ma'am.

21 Q I'd like you to take a look at what I've  
22 just had marked as State's Exhibit No.  
23 70. Can you tell me what that is?

24 A Yes, ma'am.

25 Q What is it?

1 A It's a 3x5 card containing prints.

2 Q Where did those prints come from?

3 A The man at the table in the maroon  
4 shirt.

5 Q Did you take those prints?

6 A I did.

7 Q When?

8 A At 8:03 this morning.

9 Q Do the prints on that card belong to the  
10 person that you've just identified?

11 A Yes, ma'am.

12 MS. HOOD: May the record  
13 reflect that the Deputy has  
14 identified the defendant in this  
15 case?

16 THE COURT: The record  
17 will so reflect.

18

19 BY MS. HOOD:

20 Q Have you had the opportunity to compare  
21 the known prints on State's No. 70 with  
22 some evidence including Jail Cards,  
23 Judgment and Sentences, Pen Packet?

24 A Yes, ma'am.

25 Q I'd like to show you now what's been

1 marked State's Exhibits 59-A, 60-A, 61-  
2 A, 62-A, 63-A, 64-A, and 65-A. Can you  
3 identify them?

4 A Yes.

5 Q Did you compare the prints on Exhibits  
6 59-A through 65-A to the known prints?

7 A Yes, ma'am, I did.

8 Q What were the results?

9 A They were all made by the same person.

10 Q That would be the person that you  
11 identified earlier?

12 A Yes, the man at the table in the maroon  
13 shirt.

14 Q Do you know the name of that person?

15 A Duane Edward Buck.

16 Q I'd like to show you State's No. 66.  
17 Can you identify this?

18 A Yes, ma'am.

19 Q What is it?

20 A This is called a Pen Packet.

21 Q Have you had the opportunity to compare  
22 the prints in State's No. 70 with the  
23 prints in State's 66, which is the Pen  
24 Packet?

25 A Yes, ma'am.

1 Q What was the result of your comparison?

2 A They were also made by the same person.

3 Q Who is?

4 A Duane Buck.

5 Q What is a Pen Packet?

6 A When you go to the penitentiary, that's  
7 what you get from the Texas Department  
8 of Corrections. It contains the  
9 Judgment and Sentence, photograph,  
10 fingerprints.

11 Q Can you tell me how Jail Cards  
12 originate?

13 A Jail Cards originate when someone is  
14 booked into the Harris County Jail.  
15 When a person comes in, they get  
16 information about the case, what the  
17 charge is, personal description of the  
18 person, personal property items and  
19 things like that are listed.

20 MS. HOOD: At this time  
21 we'd offer into evidence State's  
22 No. 66, the Pen Packet of Duane  
23 Buck as well as State's Exhibits  
24 59 through 65.

25 MR. GUERINOT: May we

1 approach the bench?

2  
3 (The following proceedings  
4 are held at the bench  
5 outside the hearing of the  
6 jury.)

7  
8 MR. GUERINOT: I would  
9 object to this portion of the  
10 Judgment here. Other than that,  
11 I have no objection.

12 MS. HUFFMAN: I'll take  
13 care of that.

14 THE COURT: Then I'll go  
15 ahead and admit that as amended.

16  
17 (The following proceedings  
18 are held in the hearing of  
19 the jury.)

20  
21 BY MS. HOOD:

22 Q You've just examined State's Exhibits 59  
23 through 65. Can you tell me first of  
24 all what they are?

25 A They're copies of Jail Cards.

1           Q    Are they exact duplicates of Exhibits  
2                   59-A, 60-A, 61-A, 62-A, 63-A, 64-A, and  
3                   65-A?

4           A    Yes, ma'am.

5                           MS. HOOD:  We'd offer  
6                           State's 59 through 65 after  
7                           tendering them to Defense  
8                           Counsel.

9                           THE COURT:  Ladies and  
10                          gentlemen, I'd ask that you step  
11                          back to the jury room for just a  
12                          moment.

13  
14                                   (The following proceedings  
15                                   are held outside the  
16                                   presence of the jury.)

17  
18                                   MR. GUERINOT:  We would  
19                                   object to State's Exhibit No. 59  
20                                   and the extensive verbiage down  
21                                   here, the fact that he's  
22                                   referred to as a parole  
23                                   violation, all this verbiage  
24                                   right here.

25   We would object to State's

1 No. 60 which refers to a Motion  
2 to Revoke Parole where it is  
3 clear that it was dismissed and  
4 therefore it's not relevant. It  
5 does not show any conviction. I  
6 assume that's what they mean by  
7 dismissed.

8 THE COURT: Are you  
9 objecting to the language Motion  
10 to Revoke Parole?

11 MR. GUERINOT: Yes, all of  
12 that because it does not result  
13 in conviction. It's not  
14 admissible just because  
15 something was filed. It's not  
16 relevant.

17 MS. HOOD: It shows why  
18 the booking card was originally  
19 made in the first place. The  
20 origin of that whole exhibit is  
21 relevant.

22 MR. GUERINOT: It is not  
23 relevant in that it does not  
24 show a conviction.

25 MS. HOOD: All of these



1 documents are relevant under  
2 Rule 902. They are certified  
3 copies of public records.

4 MR. GUERINOT: That  
5 doesn't make them relevant.

6 MS. HOOD: It is relevant.  
7 That's why the document was  
8 generated. That's why he was  
9 arrested.

10 MS. HUFFMAN: It's  
11 relevant at punishment because  
12 in a capital murder case we have  
13 to prove that the defendant  
14 would be a continuing threat to  
15 society. We're not limited by  
16 cases in which the defendant was  
17 convicted or for which there  
18 were convictions. The fact is  
19 that there was a Motion to  
20 Revoke Parole and he was placed  
21 in custody. Those are facts  
22 that the jury should have before  
23 them to consider. If there is  
24 something that shows it was  
25 dismissed, that may be something

1 they want to argue, but because  
2 it was dismissed doesn't mean  
3 it's not relevant for the jury  
4 to know that he was put back  
5 into jail because he violated  
6 his parole in some fashion.

7 THE COURT: This offense  
8 is entitled Parole Violator and  
9 then written underneath that is  
10 nine cases, and I guess that's a  
11 dollar figure there.

12 MS. HUFFMAN: I believe  
13 those are traffic tickets,  
14 because the agency is HPD. I'm  
15 assuming those are some kind of  
16 traffic violations. It's a  
17 traffic hold.

18 THE COURT: Let me go back  
19 then and do some re-thinking.

20 MS. HUFFMAN: I would also  
21 argue at this point that there  
22 is Motion to Revoke Parole  
23 pending that was based on this  
24 new capital murder. The jury  
25 has convicted him of this

1 capital murder. I don't see why  
2 that has to be whited out.

3 The first entry on 59 is  
4 capital murder, multi-murder,  
5 and the date is 7-30-95. On  
6 8-7-95 it's showing that there  
7 was a Motion to Revoke Parole.

8 THE COURT: So it's your  
9 position that it's relevant to  
10 this specific issue.

11 MR. GUERINOT: The bottom  
12 line is that it did not result  
13 in a conviction. Just the mere  
14 fact that you're arrested for  
15 something does not make that  
16 admissible. They are required  
17 to bring eyewitnesses down here.  
18 Just because they have some  
19 document that they want to get  
20 in doesn't make it admissible.  
21 They have to have somebody --

22 THE COURT: What I'm  
23 trying to get at is that because  
24 it says parole violator --

25 MR. GUERINOT: That's

1 the --

2 THE COURT: Let me finish.  
3 There was a Motion to Revoke his  
4 parole. Their position is  
5 that's relevant to the  
6 punishment issues in a capital  
7 murder case. Your response is  
8 what?

9 MR. GUERINOT: My response  
10 is that it did not result in  
11 conviction. Therefore, if they  
12 want to prove up a parole  
13 violation, they have to prove up  
14 that Mr. Buck committed a  
15 violation of his parole, was  
16 adjudicated and sent back. Just  
17 the fact that there's a piece of  
18 paper somewhere does not make it  
19 in and of itself admissible.  
20 This clearly did not result in a  
21 conviction. It says dismissed.  
22 The presumption is that it  
23 didn't happen. If it didn't  
24 happen, it's not admissible.

25 MS. HUFFMAN: I'm not sure

1                   what he's referring to at this  
2                   point.

3                   THE COURT:   State's 60  
4                   refers to a Motion to Revoke  
5                   Parole and shows dismissed.  
6                   Then under the offense title it  
7                   says parole violator.  On 59 it  
8                   says Motion to Revoke Parole  
9                   pending a capital murder.

10                  MR. GUERINOT:  Also on  
11                  State's No. 60, Your Honor, it  
12                  says "caution escape risk."  
13                  We'd further object to that.  
14                  That hasn't been proved up.

15                  MS. HUFFMAN:  I can  
16                  respond.  First of all, if the  
17                  Court would look at State's 66  
18                  which has already been  
19                  introduced, the Court will see  
20                  from this document that it's  
21                  clear that the defendant was  
22                  returned to TDC as a parole  
23                  violation.  It says that right  
24                  here.  Why is this any different  
25                  than any other case where we

1 prove up convictions through  
2 documents when there are no live  
3 witnesses in these cases either.  
4 We can call them if we want to  
5 at this phase or we don't have  
6 to.

7 THE COURT: It's my  
8 understanding that he was in the  
9 Harris County Jail as a result  
10 of the capital murder charge and  
11 then the Motion to Revoke was  
12 filed.

13 MS. HUFFMAN: That's the  
14 case, but there was a prior case  
15 where he was brought in as a  
16 parole violator and sent back to  
17 prison.

18 THE COURT: Which is this  
19 one. Let me see if I have this  
20 straight. This resulted in him  
21 going back to the penitentiary  
22 and this one did not. This one  
23 says parole violator and then  
24 dismissed. It did not result in  
25 any action taken by the

1 Government.

2 MS. HUFFMAN: Yes, Your  
3 Honor.

4 MR. GUERINOT: Your Honor,  
5 that one certainly did not  
6 result in the action that's  
7 reflected in State's 66.

8 THE COURT: That was my  
9 question.

10 MR. GUERINOT: Therefore,  
11 I don't think there is any  
12 probative value at all. I think  
13 the Court can see the reason  
14 it's not admissible.

15 MS. HUFFMAN: Exhibit No.  
16 59-A deals with the fact that a  
17 Blue Warrant was filed after he  
18 was charged with this Capital  
19 Warrant.

20 THE COURT: I thought this  
21 was dismissed.

22 MS. HUFFMAN: That's not  
23 dismissed, Judge.

24 THE COURT: That's what  
25 this shows.

1 MS. HUFFMAN: That's a  
2 different one. This was May of  
3 '92.

4 THE COURT: What happened  
5 to this?

6 MS. HUFFMAN: That was  
7 filed after he was charged with  
8 capital murder.

9 THE COURT: If you cannot  
10 prove it up, it should probably  
11 be deleted. On 8-7-95 the  
12 Motion to Revoke is still  
13 pending.

14 MS. HUFFMAN: I believe  
15 that's correct.

16 THE COURT: I'll grant  
17 your objection as to that.

18 MR. GUERINOT: How about  
19 the words "caution escape risk"?

20 THE COURT: Yes, sir.

21 MR. GUERINOT: In the  
22 upper left-hand corner on 61.

23 THE COURT: I saw it.

24 MR. GUERINOT: On 65 you  
25 can barely read.



1 MS. HUFFMAN: On that one  
2 which is State's 65, the date is  
3 there. It indicates that he was  
4 returned to TDC on a parole  
5 violation. There was a final  
6 disposition on that one. He was  
7 returned to TDC.

8 MR. GUERINOT: The bottom  
9 line is that they can't say why  
10 he was returned to TDC. I'd  
11 like to take the witness on voir  
12 dire.

13 THE COURT: Why don't we  
14 go through all of them first. I  
15 assume you're objecting to all  
16 of them.

17 MR. GUERINOT: Some of  
18 them I don't have objection to.  
19 Let's delete those now. I don't  
20 have an objection to State's 63.

21 THE COURT: Then I'll  
22 admit State's 63. At this time  
23 I'm going to admit State's No.  
24 59 as amended and 61 as amended  
25 subject to Defense Counsel's

1 verbal objection.

2 MR. GUERINOT: I have no  
3 objection to 59 as amended and  
4 61 as amended.

5 THE COURT: They are  
6 admitted.

7 MR. GUERINOT: As to  
8 State's 62, I would object to  
9 the first line. I'd object to  
10 all of that. It did not result  
11 in a conviction of any kind  
12 whatsoever.

13 I'd object to the part  
14 where it says repeat offender.  
15 The Judgment does not  
16 demonstrate a repeat offender  
17 but just resulted in thirty  
18 days.

19 MS. HUFFMAN: That's the  
20 reason, that's the class of  
21 misdemeanor it is that indicates  
22 it's more of the same thing,  
23 what makes it that degree of  
24 offense.

25 THE COURT: What is it?

1 MR. GUERINOT: The  
2 Judgment does not reflect a  
3 second offender.

4 MS. HUFFMAN: We don't  
5 care, Judge. Just take it out.

6 MR. GUERINOT: I'm not  
7 going to have an objection as to  
8 State's Exhibit 64.

9 THE COURT: State's  
10 Exhibit No. 64 will be admitted.

11 MR. GUERINOT: No  
12 objection to 62 as amended.

13 THE COURT: Sixty-two is  
14 admitted.

15 What about 65?

16 MR. GUERINOT: I'd object  
17 here where it says escape risk.  
18 You better look at this  
19 document, Judge. I'm going to  
20 object to this whole document.  
21 It has a stamp mark on there but  
22 -- I would object in that it  
23 does not show any kind of  
24 conviction. It does not show a  
25 revocation of parole. All it

1 has is an allegation. Obviously  
2 no action was taken on the part  
3 of the Board of Pardons and  
4 Paroles to return him to the  
5 Texas Department of Criminal  
6 Justice.

7 THE COURT: That's 65?

8 MR. GUERINOT: Yes.

9 MR. EASTERLING: If I may  
10 add something. It's hearsay and  
11 it denies our client  
12 confrontation of witnesses or  
13 whoever filed the motion,  
14 whatever governmental agency  
15 filed the motion.

16 THE COURT: Is there a  
17 reflection in the other  
18 documents of the Motion to  
19 Revoke referencing 65 was a  
20 final disposition? Is there  
21 something in your documents?

22 MS. HUFFMAN: No, ma'am,  
23 not that's relevant to that.

24 THE COURT: Then the  
25 relevance of this document other

1                   than --

2                   MS. HUFFMAN: I was going  
3                   to make the argument that the  
4                   document shows that he was  
5                   returned to TDC on August 24th  
6                   of 1994 as a result of being  
7                   placed in custody. It shows  
8                   that the person was arrested and  
9                   charged and sentenced to some  
10                  jail time.

11                  MR. GUERINOT: This is a  
12                  transmittal order. That's all  
13                  it is.

14                  THE COURT: What is there  
15                  on there to indicate that he was  
16                  returned?

17                  MS. HUFFMAN: If I may  
18                  call the jail card person, he  
19                  may be able to interpret this  
20                  better than I can.

21                  THE COURT: Did you have  
22                  an objection as to State's No.  
23                  66?

24                  MR. GUERINOT: As amended,  
25                  I have no objection to State's

1 66.

2 THE COURT: Then it's  
3 admitted.

4 Thus far I have admitted  
5 State's 59, 61, 62, 63, 64, and  
6 66. I have not yet admitted 60  
7 and 65.

8 MS. HUFFMAN: We'll  
9 withdraw them.

10 THE COURT: Then let the  
11 record reflect that 59, 61, 62,  
12 63, and 66 are admitted.

13 MS. HUFFMAN: Sixty-seven  
14 and 68, I'm going to offer them.

15 MR. GUERINOT: And I'm not  
16 going to have an objection.

17 THE COURT: Then bring the  
18 jury in.

19 (The following proceedings  
20 are held in the presence  
21 of the jury.)  
22

23 DIRECT EXAMINATION CONTINUED

24 BY MS. HOOD:

25 Q Deputy, I'd refer your attention to

1 Exhibits 62 and 63 as well as State's  
2 Exhibits 67 and 68. Do State's Exhibits  
3 62 and 63 relate to State's 67 and 68?

4 A Yes, ma'am.

5 Q For the record and for the jury's  
6 edification, what is State's 62?

7 A This is a copy of a jail card.

8 Q What is State's Exhibit 68?

9 A It's a Judgment and Sentence.

10 Q As you've testified earlier, have you  
11 had an opportunity to compare the  
12 fingerprints on State's 62 to the known  
13 prints that you have on State's No. 70?

14 A Yes, ma'am.

15 Q And they refer to this defendant, Duane  
16 Buck?

17 A Yes, ma'am.

18 Q What is State's 68?

19 A Sixty-eight is a Judgment and Sentence.

20 Q Can you connect State's 62 which  
21 contains the known print of Duane Buck  
22 to State's No. 68?

23 A Yes, ma'am by cause number.

24 Q So does State's 62 refer to the same  
25 Duane Buck that's reflected in 68?

1 A Yes, ma'am.

2 Q State's 63 is a jail card for this  
3 defendant Duane Buck which you  
4 determined from the prints on it,  
5 correct?

6 A Yes, ma'am.

7 Q What is State' 67?

8 A State's 67 is also a Judgment and  
9 Sentence.

10 Q To whom does it refer?

11 A Duane Edward Buck.

12 Q How did you connect that up?

13 A By cause number.

14 MS. HOOD: Your Honor, at  
15 this time we would offer State's  
16 68 and 67 after tendering the  
17 same to Defense Counsel for his  
18 inspection.

19 MR. GUERINOT: We have  
20 looked at them Judge and have no  
21 objection.

22 THE COURT: They are  
23 admitted.

24 MS. HOOD: Pass the  
25 witness.



1 MR. GUERINOT: We have no  
2 questions.  
3

4 (At this time the witness  
5 is excused from the  
6 courtroom.)